

### **REMARKS**

Claims 1 - 23 are pending. Applicant respectfully requests reconsideration

On page the Office Action rejects claims 1 - 6, 8 - 15, and 17 - 23 under 35 U.S.C. § 102(e) over U.S. Patent 6,876,988 to Helsper (hereafter Helsper), and responds to Applicant's previous arguments by asserting that "the term 'generic output' was never defined," that "as a matter of fact the term 'generic output,' is only recited in the claim language," that the "Examiner is interpreting 'generic output' as any type of data or output that results from or relates to the translating of collected service information," and that Helsper "still teaches of the generic output (col 2, lines 55 - 60)." The rejection over Helsper is respectfully traversed.

As to the Examiner's assertion that generic output is not defined, Applicant vehemently disagrees. Note for example, the specification at page 5, lines 3 - 20:

However the performance information is gathered, the apparatus and method translate the gathered performance information, or metrics, into health metrics. The result is an abstracted set of consistent service health metrics that can be provided to the performance monitoring tools such that the tools may use these metrics without needing to know how the health metrics were derived. This decouples the performance tool implementation from the metric derivation and removes dependencies between the services, their implementation, and the management tool set. For example, a tool may use the generated service level violation metric to generate an alert when violations raise above a threshold. The performance monitoring tools do not need to know anything about the service, its instrumentation, or how the service level metric is calculated. The tool simply compares the resultant metric against its threshold. The performance monitoring tool uses a programmatic interface library call or script interface to access health metrics for all current services. If the underlying application changes, the current version of the performance monitoring tool is unaffected because of this consistent interface. As a result, the system administrator does not necessarily need to install a new version of the performance monitoring tool. Thus, the apparatus and method are extensible without propagating a dependency up into the higher levels of the management software.

Also note page 7, lines 12 - 23:

To solve these problems, a method and an apparatus are used to derive consistent service health measures by combining various instrumentation from both internal sources and external sources that relate to the service under observation. The service health metrics may be directly measured or derived from the applications, processes and thread instrumentation, for example. The method is independent of specific provider applications and management tool sets, thereby allowing for shorter time-to-market for service management solutions.

The output of the method may be either in the form of a programmatic or scriptable interface to be used by high-level monitoring tools that are capable of reporting status of many disparate computer services. The tools may reside on different systems and

architectures and may be supplied by different vendors. To accommodate different performance monitoring tools, the interfaces are generic and flexible.

Finally, note page 13, lines 15 - 17:

The rules set 127 provides algorithms and rules to translate the metrics supplied by the data collection engine 121 into a generic format that is usable by the performance monitoring tools.

As the above-quoted passages from the specification demonstrate, the term “generic output” is clearly defined in the specification. That is, the “generic output” is an interface that allows the health metrics to be used without any need to know how the health metrics were derived, and that removes any dependencies between the services, their implementation, and the management tool set. As thus defined, the claimed generic output has a specific meaning that is not addressed in Helsper.

Helsper is directed to a forecasting system that produces near-term predictions of future network performance of e-business systems and system components. However, the output of Helsper’s system is not a generic output. Instead, Helsper uses monitoring and forecasting kernels to tailor a concurrent-learning information processor (CIP) to various physical applications. The kernels “may correspond to a spatial configuration of inputs and outputs, a temporal configuration of inputs and outputs, or a combined spatial and temporal configuration of inputs and outputs. As specific examples, a spatial configuration may be tailored to an image processing application, a temporal configuration may be tailored to a commodity price fore-casting application ... .” See column 7, lines 53 - 62. Furthermore, Helsper’s system includes a self-learning function wherein output features are, over time, transformed “into computed output values in accordance with output feature specifications supplied by the manager.” See column 8, lines 39 - 43. Thus Helsper actually teaches away from a generic output - one of Helsper’s key features is an output that changes with each monitoring/forecasting cycle.

On page 2 of the Office Action, the Examiner “interprets” the term “generic output” as “any type of data,” and justifies this interpretation because it is the broadest possible interpretation. However, the Examiner’s interpretation defies common sense and in essence renders the term “generic output” meaningless. That is, if “generic output” can be “any type of data,” the modifier “generic” can have no meaning. Instead, the modifier “generic,” given its ordinary dictionary definition, should lead to an interpretation of “generic output” as one that has the characteristics of the entire group of outputs. The “any type of data”

interpretation that the Examiner incorrectly espouses has a very different meaning, namely any output, regardless of its characteristics. Furthermore, the doctrine of broadest reasonable construction of a claim term still requires that such interpretation “be consistent with the one that those skilled in the art would reach [and must be] consistent with the specification.” *See In re Cortright*, 165 F.3d 1353, 49 USPQ2d 1464 (Fed. Cir. 1999). The Examiner’s interpretation is neither consistent with the specification nor consistent with that of one of ordinary skill in the art. Thus, the Examiner’s interpretation of “generic output” is improper.

In contrast to Helsper, claim 1 recites “translating the collected service performance information into a generic output.” A generic output is described in the specification, at least at page 7, line 28 to page 8, line 2: “[t]he health generator 10 transforms the performance information into a consistent set of health metrics 14 that can be accessed by end consumer 13.” Because Helsper does not disclose or suggest the claimed generic output, claim 1 is patentable.

Independent apparatus claim 11 recites a data analysis engine that translates the collected service health information ... and provides one or more generic health metrics. As noted above, Helsper does not disclose or suggest generic outputs. Accordingly, claim 11 is also patentable.

Independent method claim 18 recites the step of generating a generic service health output. For the same reasons that claims 1 and 11 are patentable, claim 18 is also patentable.

Independent apparatus claim 21 recites a health generator module that applies a rule set to the received performance information and derives generic health metrics therefrom. As noted above with respect to claim 1, Helsper does not disclose or suggest a generic output. Accordingly, claim 21 is also patentable.

Claims 2 -5, and 8 - 10 depend from patentable claim 1; claims 12 - 15 and 17 - 20 depend from patentable claim 11; and claims 22 and 23 depend from patentable claim 21. For these reasons and the additional features they recite, claims 2 - 5, 8 - 10, 12 - 15, 17 - 20, 22, and 23 are also patentable. Withdrawal of the rejection of claims 1 - 6, 8 - 15, and 17 - 23 under 35 U.S.C. § 102(e) is respectfully requested.

On page 3 the Office Action rejects claim 7 under 35 U.S.C. § 103(a) over Helsper in view of U.S. Patent 5,949,976 to Chappelle. This rejection is respectfully traversed.

Claim 7 depends from patentable claim 1, and for this reason and the additional features it recites, claim 7 is also patentable. Withdrawal of the rejection of claim 7 under 35 U.S.C. § 103(a) is respectfully requested.

On page 4 the office action rejects claim 16 under 35 U.S.C. § 103(a) over Helsper in view of U.S. Patent 6,647,413 to Warland. This rejection is respectfully traversed.

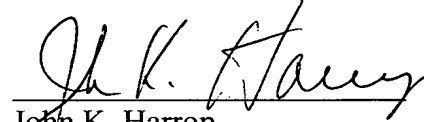
Claim 16 depends from patentable claim 11, and for this reason and the additional features it recites, claim 16 is also patentable. Withdrawal of the rejection of claim 6 under 35 U.S.C. § 103(a) is respectfully requested.

In view of the above remarks, Applicant respectfully submits that the application is in condition for allowance. Prompt examination and allowance are respectfully requested.

Should the Examiner believe that anything further is desired in order to place the application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Date: **February 13, 2006**

Respectfully submitted,



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